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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Nikola Corporation,

10 Plaintiff,

11 v.

12 Trevor R Milton,

13 Defendant.
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No. CV-24-00563-PHX-DJH

ORDER

15 Plaintiff Nikola Corporation (“Nikola”) filed a Motion to Seal (Doc. 8) regarding
16 unredacted “Stock Activity Reports” they attached under Exhibits G and H to their
17 Application for a Temporary Restraining Order Application (Doc. 5)
18 (“TRO Application”). (See Docs. 5-8; 5-10).¹

19 The Court’s analysis regarding a motion to seal begins with a “strong presumption
20 in favor of [public] access.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178
21 (9th Cir. 2006); see also *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)
22 (explaining the public has a general right of access “to inspect and copy . . . judicial
23 records and documents”). “[A] party seeking to seal a judicial record then bears the
24 burden of overcoming this strong presumption.” *Ctr. for Auto Safety v. Chrysler Grp.,*
25 *LLC*, 809 F.3d 1092, 1095 (9th Cir. 2016) (quoting *Kamakana*, 447 F.3d at 1178)). To
26 meet this burden, a party seeking to file a document under seal must give compelling
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28 ¹ The Court notes Nikola has filed both the redacted and unredacted versions of Exhibits G and H. (Compare Docs. 5-7; 5-9 with Docs. 5-8; 5-10); (see also Doc. 8 at 1 n.1). The Court assumes Nikola is requesting to seal the unredacted versions at (Docs. 5-8; 5-10).

1 reasons supported by specific factual findings. *Id.* General allegations of confidentiality,
 2 “without further elaboration or any specific linkage with the documents,” do not satisfy
 3 the moving party’s burden. *Kamakana*, 447 F.3d at 1184.

4 Nikola represents the Stock Activity Reports were “provided by a third-party that
 5 Nikola retains for the purposes of providing certain services pursuant to a master services
 6 agreement (‘MSA’) and was derived from that third-party’s proprietary analyses of
 7 available DTC² settlement data tracking the outflows and inflows of trades in Nikola’s
 8 stock at the broker level during a given day.” (Doc. 8 at 3). Nikola argues these
 9 documents should be sealed because, according to the terms of the MSA (Doc. 8-1),
 10 Nikola has an obligation to the third-party to keep certain non-public information
 11 disclosed as confidential. (Doc. 8 at 5 (citing Doc. 8-1 at 3)). Nikola further argues that
 12 sealing these documents would not impact the public’s ability to understand Nikola’s
 13 TRO Application. (*Id.* at 6).

14 The Court agrees that the unredacted versions of the Stock Activity Reports should
 15 be sealed. The Stock Activity Reports contain the third-party’s non-public proprietary
 16 analyses and approximation of broker transactions in Nikola stock occurring at the
 17 custodian level during a given time-period. And, documents containing non-public
 18 financial information may constitute trade secrets when such information provides
 19 economic value and would allow a competitor to gain an advantage in the marketplace if
 20 discovered. *See MD Helicopters Inc. v. Boeing Co.*, 2019 WL 2184762, at *2–3 (D.
 21 Ariz. May 21, 2019); *see also BBK Tobacco & Foods LLP v. Cent. Coast Agric. Inc.*,
 22 2022 WL 1000183, *7 (D. Ariz. Apr. 4, 2022) (finding “good cause exists to seal the
 23 parties’ proprietary and non-public financial data”). Furthermore, the Stock Activity
 24 Reports state that they are “confidential and proprietary advisory report[s],” and were
 25 designated by the third-party as “Highly Confidential: Secure Handling and Restricted

26 ² The DTC, or Depository Trust Company, is “a central securities depository that, among
 27 other things, (i) provides electronic record-keeping of securities balances, (ii) acts as a
 28 clearinghouse to process and settle almost all corporate, equity, and money market
 securities in the United States, and (iii) provides brokers and financial institutions with a
 daily record of net settlement obligations at the end of each day from trading[.]”
 (Doc. 8 at 2 n.4).


1 Distribution” when disclosed to Nikola. (Docs. 5-8 at 2; 5-10 at 2). Nikola’s interest in
2 keeping the Stock Activity Reports confidential outweighs the public’s interest in
3 accessing this part of the record. Therefore, the Court finds that Nikola has demonstrated
4 compelling reasons for sealing the unredacted versions of Exhibits G and H to the TRO
5 Application.

6 Accordingly,

7 **IT IS HEREBY ORDERED** that Plaintiff Nikola Corporation’s Motion to Seal
8 (Doc. 8) is **GRANTED**.

9 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to **SEAL**
10 the unredacted versions of the Stock Activity Reports filed under Exhibits H and G at
11 Docs. 5-8; 5-10.

12 Dated this 20th day of March, 2024.

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16 Honorable Diane J. Humetewa
17 United States District Judge
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